IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No.378 of 2006 (M/B)

Sri Sanjay Kuamr S/o Sri Daryab Singh, R/o 58, Malviya Nagar, Dehradun and four others.

... Petitioners

Versus

State of Uttaranchal through Secretary (Home), Govt. of Uttaranchal, Civil Secretariat, Dehradun (Uttaranchal) and two others.

... Respondents

Sri S.S. Chauhan, Advocate for the petitioners
Learned G.A. for the respondents.

Dated: April 22, 2006

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

By means of this writ petition, the petitioners have prayed for writ of certiorari quashing the F.I.R. dated 26.03.2006 of Case Crime No.103 of 2006 under Section 420, 406, 120(b) of I.P.C. at Police Station Kotwali, Dehradun, District Dehradun on the direction of the Magistrate concerned under Section 156(3) for an offence alleged to have been committed by the petitioners.

2. Section 156 of the Cr. P.C. reads as under: -

> **156. Police officer's power to investigate cognizable cases: - (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.**

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was no empowered under this section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned.

3. Sub-Section (3) of Section 156 empowers the Magistrate empowered under Section 190 of Cr.P.C. to pass the order for investigation as provided in sub-clause (1) and (2) of Section 156 of Cr.P.C. Sub-sections (1) and (2) empowers the in-charge of the Police Station to investigate without order of the Magistrate. In sub-section (3) of Section 156 of Cr.P.C., the word "**may**" has been used which denotes that when an application is received, the Magistrate "**may**" or "**may not**" order for investigation, it is obvious that before passing an order for investigation, the Magistrate has to apply its mind as to whether there is some substance regarding the commission of offence or not and the application discloses some offence or not. Only after being satisfied, he will pass the order for investigation otherwise he will reject the same. Therefore, once the Magistrate is satisfied and ordered for investigation, it must be inferred that the order has been passed after being satisfied that the commission of offence is made out against the named persons. The application on which the Magistrate passes the order is treated as a First Information Report disclosing the offence against the accused.

4. Therefore, we hold that the F.I.R. lodged on the order passed under Section 156(3) of the Cr.P.C. cannot be quashed in a proceeding under Article 226 of Constitution of India.

5. The petition is dismissed accordingly. No order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

Before the aforesaid order could be signed, the learned counsel for the petitioners sought permission to withdraw the writ petition.

Permission granted. The petitioner is dismissed as withdrawn.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

Rajeev Dang